

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

DARREN GILBERT,

Plaintiff,

v.

7-ELEVEN, INC. dba 7-ELEVEN
#23615; JATINDER BRAR dba 7-
ELEVEN #23615; JATINDER SINGH
BRAR dba 7-ELEVEN #23615; I-
CHUNG HO, Trustee of the HO
LIVING TRUST dated October 26,
1991; MIN-CHING HO, Trustee of
the HO LIVING TRUST dated
October 26, 1991; and KATHLEEN
A. HO,

Defendants.

No. 2:21-cv-01984 WBS KJN

ORDER RE: PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

-----oo0oo-----

Plaintiff Darren Gilbert brought this action against
defendants 7-Eleven, Inc., Jatinder Brar, and Jatinder Singh
Brar, all allegedly doing business as 7-Eleven #23615; I-Ching Ho
and Min-Ching Ho, Trustees of the Ho Living Trust; and Kathleen
A. Ho. Plaintiff alleges that he encountered several physical

1 barriers to access when he made purchases at a 7-Eleven store
2 owned and operated by defendants, located at 348 Elkhorn
3 Boulevard in Rio Linda, California. He asserts that these
4 barriers to access violated the Americans with Disabilities Act,
5 42 U.S.C. § 12101 et seq. ("ADA"); the Unruh Civil Rights Act
6 ("Unruh Act"), Cal. Civ. Code § 51 et seq.; and Cal. Health &
7 Safety Code § 19955 et seq. (Compl. (Docket No. 1).) Plaintiff
8 now moves for summary judgment on his ADA and Unruh Act claims.
9 (Docket No. 18.)

10 Summary judgment is proper "if the movant shows that
11 there is no genuine dispute as to any material fact and the
12 movant is entitled to judgment as a matter of law." Fed. R. Civ.
13 P. 56(a). A party may move for summary judgment either for one
14 or more claims or defenses, or for portions thereof. Id. A
15 material fact is one "that might affect the outcome of the suit
16 under the governing law," and a genuine issue is one that could
17 permit a reasonable trier of fact to enter a verdict in the non-
18 moving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S.
19 242, 248 (1986). Any inferences drawn from the underlying facts
20 must be viewed in the light most favorable to the non-moving
21 party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
22 475 U.S. 574, 587 (1986).

23 To prevail on his ADA claim, plaintiff must show that
24 he was denied public accommodations by the defendant because of
25 his disability. Molski v. M.J. Cable, Inc., 481 F.3d 724, 730
26 (9th Cir. 2007). The standards for determining accessibility to
27 public accommodations under the ADA are set forth by the
28 Accessibility Guidelines which "provide[] the objective contours

1 of the standard that architectural features must not impede
2 disabled individuals' full and equal enjoyment of
3 accommodations." Chapman v. Pier 1 Imps. (U.S.), Inc., 631 F.3d
4 939, 945 (9th Cir. 2011) (en banc); see 28 C.F.R. pt. 1191 ("2010
5 Standards"); 28 C.F.R. pt. 36, App. D ("1991 Standards").

6 Defendants contend that the conditions plaintiff
7 allegedly encountered at the time of his visits to the 7-Eleven
8 store either were not violations of the guidelines or have since
9 been remedied. Based on the evidence presented by the parties --
10 including reports from both parties of inspections occurring
11 before and after defendants' remedial measures -- the court
12 concludes that there remain genuine disputes of material fact
13 concerning multiple alleged violations of the applicable
14 Accessibility Guidelines which preclude the granting of summary
15 judgment on plaintiff's ADA claim.

16 The Unruh Act "incorporates the substantive standards
17 of the ADA and creates a private right of action as a matter of
18 state law." Dep't of Fair Emp't & Hous. v. Law Sch. Admission
19 Council Inc., 896 F. Supp. 2d 849, 865 (N.D. Cal. 2012); Cal.
20 Civ. Code § 51(f). Unlike the ADA, the Unruh Act permits
21 plaintiffs aggrieved by access barriers to recover damages. See
22 Cal. Civ. Code § 52(a); Munson v. Del Taco, Inc., 46 Cal. 4th
23 661, 669 (Cal. 2009). Because plaintiff has not met his burden
24 of showing that he is entitled to summary judgment on the ADA
25 claim, he has likewise failed to meet his burden of showing his
26 entitlement to summary judgment on the Unruh Act claim.

27 IT IS THEREFORE ORDERED that plaintiff's motion for
28 summary judgment (Docket No. 18) be, and the same hereby is,

DENIED.

Dated: May 31, 2023

A handwritten signature in blue ink, appearing to read "William B. Shubb", is written over a horizontal line.

WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE